

Availability of Unemployment Benefits for Affected Federal Employees During a Government Shutdown

September 17, 2019

During the last decade ([FY2014](#), [FY2018](#), and [FY2019](#)), there have been several periods when appropriations for significant portions of federal agencies and programs lapsed without immediate new budgetary authority. As a result, some federal employees were temporarily furloughed. These “[shutdown furloughs](#)” happen when a federal government agency or program lacks budget authority and experiences a “[funding gap](#)” under the Antideficiency Act (31 U.S.C. §§1341 et seq.). In general, a funding gap requires that these agencies and programs cease operations, except in certain circumstances when continued activities are authorized by law. A funding gap that affects one or more federal entities is often referred to as a [government shutdown](#).

Most recently, FY2019 appropriations lapsed for many agencies and programs beginning December 22, 2018, until funding resumed late in the day on January 25, 2019. This FY2019 lapse led to a partial government shutdown. As a result, agencies without funding furloughed many federal employees, and many federal employees excepted from furlough were working without pay during this 35-day period.

Unemployment Compensation

The [joint federal-state Unemployment Compensation \(UC\) program](#) provides income support through weekly UC benefit payments. Federal laws and regulations provide broad guidelines on UC benefit coverage, eligibility, and benefit determination, but the specifics are determined by each state, the District of Columbia, Puerto Rico, and the Virgin Islands. UC benefits are [funded through employer payroll taxes](#). UC benefits are considered to be mandatory entitlements and thus benefits must be paid to eligible individuals [during a government shutdown](#).

The [UC program generally provides benefits](#) to both eligible individuals who are on temporary lay-off as well as those who experience a permanent job loss. To receive UC benefits, claimants must be able, available, and actively searching for work. UC claimants generally may not refuse suitable work, as defined under state laws, and maintain their UC eligibility.

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IN11169

A furloughed federal employee may be eligible for Unemployment Compensation for Federal Employees (UCFE). States are [required](#) to operate the UCFE program under the same terms and conditions that apply to regular state UC. UCFE eligibility, like regular UC eligibility, is determined under the laws of the state in which an individual's official workplace is located.

Federal employees who are in furlough status on account of a government shutdown are generally treated by state law as laid-off with an "expectation of recall." Depending on state UC laws and regulations, the [state may have an option](#) to not require federal employees to search for work given an expected recall.

U.S. Department of Labor Guidance for Excepted Federal Workers

During a shutdown, [an affected agency may "except" certain workers from furlough](#) based upon the Office of Management and Budget's guidance. These excepted workers are required to report for work and perform duties, but their pay is delayed until appropriations are enacted. According to [the U.S. Department of Labor's \(DOL's\) 2013 guidance](#), excepted federal employees who are performing services (but payment for the work is delayed) would generally be ineligible for UCFE benefits based on states' definitions of "unemployment." In January 2019, DOL released a [statement reiterating this guidance](#). DOL maintains a website with additional ["Information on Unemployment Benefits for Federal Workers During the Partial Government Shutdown."](#)

UCFE and Retroactive Pay

Because retroactive pay for furloughed and excepted federal employees was permanently authorized under P.L. 116-1 (S. 24), the Government Employee Fair Treatment Act of 2019 (enacted January 16, 2019), UCFE payments made to federal employee claimants during the most recent lapse in appropriations may be deemed an overpayment, subject to state UC laws regarding overpayment recovery. According to [the Office of Personnel Management's guidance](#) on this issue:

The state UI [Unemployment Insurance] agency will determine whether or not an overpayment exists and, generally, the recovery of the UCFE overpayment is a matter for state action under its law; however, some state UI laws require the employer to recover such overpayment by collecting the overpayment amount from the employee. The Federal and state agencies will need to coordinate to determine the required action in accordance with the individual state UI law. Federal agencies are encouraged to develop lists or spreadsheets that can be provided to the state(s) containing the employees' names, social security numbers, and the amounts and periods of time covered by the retroactive payment.

UC for Employees of Government Contractors

Private-sector workers who are furloughed or laid off due to a government shutdown because they were [employed by government contractors](#) may be eligible for regular UC benefits if they did not receive pay for those unemployed weeks (including, for example, vacation pay or other paid leave). There is no specific authority to provide retroactive pay to government contractors' employees affected by a government shutdown (i.e., comparable to the authority to provide retroactive pay to furloughed and excepted federal employees under P.L. 116-1).

Recent Legislation to Amend UCFE Eligibility During a Shutdown

In the 116th Congress, there has been interest in providing financial assistance to furloughed and excepted federal employees through the UC program. Based on this rationale, a number of bills have been introduced that would amend UCFE law to create a new UCFE eligibility category for excepted federal employees who are unpaid but required to work during a government shutdown due to a lapse in appropriations: H.R. 720; H.R. 725; H.R. 1117; H.R. 4072; and S. 165.

All of these bills would make excepted federal employees eligible for UCFE. None of these bills would amend current federal laws with regard to the interaction of UCFE payments and retroactive pay. These bills vary in other details:

- *Authorization period*
 - H.R. 720 and H.R. 1117 would provide authority to make excepted workers eligible for UCFE only during FY2019.
 - H.R. 4072 would provide this authority only during FY2020.
 - S. 165 and H.R. 725 would authorize this new authority permanently.
- *Applicability to [unemployment compensation for ex-servicemembers \(UCX\)](#)*
 - H.R. 1117 and H.R. 4072 would also deem unpaid military servicemembers during a government shutdown to be eligible for benefits through the UCX program. (Similar to UCFE, federal law includes provisions relevant to unemployed, former military service personnel. The UCX program does not currently provide benefits for current military servicemembers on active duty because, by definition, they are active and working. However, former active duty military personnel and certain reservists recently separated from active duty may be eligible.)
 - H.R. 720, H.R. 725, and S. 165 would not extend this eligibility to unpaid military servicemembers.
- *Exemption from one-week waiting period for benefits*
 - S. 165, H.R. 725, and H.R. 4072 would waive the [one-week waiting period](#) (otherwise often required under state laws) before UCFE benefits would be payable.
- H.R. 720 and H.R. 1117 would not make any changes to waiting periods (if required under state laws).

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